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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,892	03/15/2000	Alfonso Navarro	660005.98641	9509

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EXAMINER

CHAWLA, JYOTI

ART UNIT PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/525,892

Applicant(s)

NAVARRO ET AL.

Examiner

Jyoti Chawla

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4,5,7,16,17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,5,7,16,17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's amendment submission filed on December 18, 2006 has been entered.

Claims 4 and 17 have been amended and claim 11 has been withdrawn from consideration. Claims 4, 5, 7, 16, 17, 19 -24 remain pending and are examined in the present application.

### ***Claim Objections***

Objection to Claims 4 and 17, stated in the office action dated June 14, 2006 regarding the correction of the term "gravity" to "specific gravity" are maintained for the reasons of record, as the applicant has not amended the term in steps c) in the amended claims 4 and 17.

### ***Claim Rejections - 35 USC § 103***

Claims 4, 5, 7, 16, 17, 19 and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quain (GB 2197341 A) in view of Handbook of Brewing further in view of applicant's own admission (Pages 1-4).

The references and rejection are incorporated herein and as cited in the office action mailed June 14, 2006.

### ***Response to Arguments***

Applicant's arguments, see (Remarks, Pages 4-6), filed December 18, 2006 with respect to 35 USC 103 (a) rejection over Quain (GB2197341 A) in view of the Handbook of Brewing and Applicant's admission have been fully considered and are not persuasive.

l) Applicant's argument that "nothing in Quain teaches the use of wort-free aqueous solution, as recited in the present claims" (Remarks, page 4, regarding claims 4 and 17), is not persuasive because Quain teaches addition of yeast in an aqueous

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suspension and fully-oxygenating the yeast before adding to the wort (Page 1, lines 45-65). Furthermore, the reference also teaches suspending yeast in distilled water (Page 2, lines 18-19) before the yeast is used for pitching wort. Distilled water constitutes wort-free aqueous solution as instantly claimed. Thus the prior art teaches of adding yeast to a wort-free aqueous solution, absent any clear and convincing evidence and/or arguments to the contrary.

II) Regarding the combination of Quain and Handbook of Brewing regarding claims 4 and 17, applicant is referred to the response above. Furthermore, in response to applicant's argument that invention is not obvious over the combination of Quain, Handbook and applicant's own admission, the applicant is referred that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

III) Applicant's argument regarding claims 5 and 20, that applicant's admission of prior art where zinc is added to the yeast in order to enhance the fermentation rate, does not apply since the prior art does not add yeast to a wort-free aqueous solution as recited (Remarks, Pages 4-5) is not persuasive as claims 5 and 20 have been rejected over a combination of references and the combination teaches addition of yeast to a wort-free aqueous solution as discussed above. Regarding the addition of zinc to the yeast solution Regarding claims 5 and 20, the applicant is referred to Page 4 of the rejection of record dated June 14, 2006 where, it has been discussed that Quain is silent regarding addition of zinc to the yeast suspension. Applicants admit that the prior art has added zinc to yeast fermentations to enhance the fermentation rate (Top of page 3 of the specification). Further, the Handbook of Brewing teaches that addition of zinc to water that is used in brewing processes was known. Proprietary blended yeast foods containing zinc are used in brewing as aids to reduce problems and have a more

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consistent fermentation (Pages 216-217). Zinc plays an important role in the protein synthesis and yeast growth and also reduces toxicity of cadmium (Page 143). Therefore it would have been obvious to one with ordinary skill in the art at the time of the invention to add zinc as part of the aqueous nutrient solution for yeast because it is beneficial to the yeast fermentation rate and as a result shorten the beer making process. Further, it is noted that no specific step sequence for the addition of zinc has been claimed, therefore the prior art combination reads upon the claims 5 and 20, as recited, absent any clear and convincing evidence and/or arguments to the contrary. Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

IV) Applicant's arguments regarding the unobviousness of claims 7, 16, 17(e), and 21-24 over the combination of Quain, Handbook of Brewing and Applicant's admission (remarks, Page 5), are not persuasive as the applicant's arguments are based on Quain not teaching addition of yeast to a wort-free aqueous solution, which has been responded above.

Therefore, applicant's arguments dated December 18, 2006 have not been found persuasive and the rejections are maintained for reasons of record.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla  
Examiner  
Art Unit 1761



KEITH HENDRICKS  
PRIMARY EXAMINER